

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 97-CR-98

DAVID KADLEC, et al.

Defendants.

ORDER APPOINTING COUNSEL

The defendant has filed a *pro se* motion seeking appointment of counsel to assist him in pursuing his motion for compassionate release. In an order dated February 23, 2022, District Judge Stadtmueller denied his motion for compassionate release without prejudice, finding that the defendant had not exhausted his administrative remedies as to several of his arguments. The matter is referred to me for consideration of the motion to appoint counsel, who would represent the defendant with respect to any future motion for compassionate release and the required exhaustion of administrative remedies.

Because the Sixth Amendment right to counsel extends only to a defendant's appeal, the defendant has no constitutional right to counsel to aid in his pursuit of compassionate release under 18 U.S.C. § 3582(c)(1)(A). *United States v. Hawkins*, No. 2:17-CR-134-JVB-JEM, 2020 WL 4671167, at *1 (N.D. Ind. Aug. 12, 2020). Neither is there a statutory right to counsel under these circumstances. *Id.* Instead, it is a matter of discretion: "[t]he judge can appoint counsel for a movant, but need not do so." *United States v. Tidwell*, 178 F.3d 946, 949 (7th Cir. 1999). Here, Judge Stadtmueller directed the Federal Defender Service to indicate

its position on the defendant's motion. In a letter from Federal Defender Albee, the Service indicates that it believes there is some potential merit in the defendant's motion and that the defendant would benefit from appointment of counsel. However, due to a conflict, the FDS itself is unable to represent him. Given the position of FDS, as well as the number of issues raised in the defendant's *pro se* motion, it appears that the appointment of counsel would be warranted.

The motion to appoint counsel is therefore **GRANTED**. Federal Defender Services is directed to seek counsel to represent the defendant with respect to any future motion for compassionate release.

SO ORDERED this 24th of February, 2022.



STEPHEN C. DRIES
United States Magistrate Judge